

Attorneys for Plaintiff

Defendant.

DEMAND FOR JURY TRIAL

1 publications.

2 3. Defendant owns and operates a social media account on Twitter
3 known as @ghostly (the “*Account*”).
4

5 4. Defendant, without permission or authorization from Plaintiff
6 actively copied, stored, and/or displayed Plaintiff's Photograph on the Account
7 and engaged in this misconduct knowingly and in violation of the United States
8 copyright laws.
9

10 **PARTIES**

11 5. Plaintiff John Carta is an individual who is a citizen of the State of
12 Connecticut and maintains a principal place of business in New Canaan, in
13 Fairfield County.
14

15 6. Upon information and belief, Defendant Ghostly International LLC,
16 is a Michigan Limited Liability Company with a principal place of business at
17 201 South Division Street, Ann Arbor in Washtenaw County, Michigan and is
18 liable and responsible to Plaintiff based on the facts herein alleged.
19

20 **JURISDICTION AND VENUE**

21 7. This Court has subject matter jurisdiction over the federal copyright
22 infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.
23

24 8. This Court has personal jurisdiction over Ghostly International LLC
25 because it maintains its principal place of business in Michigan.
26
27
28

1 9. Venue is proper under 28 U.S.C. §1391(a)(2) because Ghostly
2 International LLC does business in this Judicial District and/or because a
3 substantial part of the events or omissions giving rise to the claim occurred in this
4 Judicial District.
5

6 **FACTS COMMON TO ALL CLAIMS**
7

8 10. Plaintiff is a professional photographer by trade who is the legal and
9 rightful owner of photographs which Plaintiff licenses to online and print
10 publications.
11

12 11. Plaintiff has invested significant time and money in building
13 Plaintiff's photograph portfolio.
14

15 12. Plaintiff has obtained active and valid copyright registrations from
16 the United States Copyright Office (the "*USCO*") which cover many of Plaintiff's
17 photographs while many others are the subject of pending copyright applications.
18

19 13. Plaintiff's photographs are original, creative works in which Plaintiff
20 owns protectable copyright interests.
21

22 14. Ghostly International LLC is the owner of the Account and is
23 responsible for its content.
24

25 15. Ghostly International LLC is the operator of the Account and is
26 responsible for its content.
27

28 16. The Account is a popular and lucrative commercial enterprise.

1 17. The Account is monetized in that it promotes traffic to Defendant's
2 website on which it sells merchandise to the public and, upon information and
3 belief, Defendant profits from these activities.
4

5 18. On February 8, 2020, Plaintiff authored a photograph of celebrities
6 Mary-Kate Olsen and Ashley Olsen (the "*Photograph*"). A copy of the
7 Photograph is attached hereto as Exhibit 1.
8

9 19. Plaintiff applied to the USCO to register the Photograph on April 9,
10 2020 under Application No. 1-8721489258.
11

12 20. The Photograph was registered by USCO on April 9, 2020 under
13 Registration No. VA 2-202-025.
14

15 21. On April 3, 2022, Plaintiff first observed the Photograph on the
16 Account in a post dated February 13, 2020. A copy of a screengrab of the Account
17 including the Photograph is attached hereto as Exhibit 2.
18

19 22. The Photograph was displayed at URL:
20 <https://twitter.com/ghostly/status/1228113475244830720?lang=ar-x-fm>.

21 23. The Photograph was stored at URL:
22 <https://pbs.twimg.com/media/EQsisVIWAAAntF7?format=jpg&name=large>.
23

24 24. Without permission or authorization from Plaintiff, Defendant
25 volitionally selected, copied, stored and/or displayed Plaintiff copyright protected
26 Photograph as is set forth in Exhibit "1" on the Account.
27
28

1 25. Upon information and belief, the Photograph was copied, stored and
2 displayed without license or permission, thereby infringing on Plaintiff's
3 copyrights (hereinafter the "*Infringement*").
4

5 26. The Infringement includes a URL ("*Uniform Resource Locator*") for
6 a fixed tangible medium of expression that was sufficiently permanent or stable
7 to permit it to be communicated for a period of more than a transitory duration
8 and therefore constitutes a specific infringement. *17 U.S.C. §106(5); Perfect 10,*
9 *Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1160 (9th Cir. 2007).
10
11

12 27. The Infringement is an exact copy of the entirety of Plaintiff's
13 original image that was directly copied and stored by Defendant on the Account.
14

15 28. Upon information and belief, Defendant takes an active and
16 pervasive role in the content posted on its Account, including, but not limited to
17 copying, posting, selecting, commenting on and/or displaying images including
18 but not limited to Plaintiff's Photograph.
19

20 29. Upon information and belief, the Photograph was willfully and
21 volitionally posted to the Account by Defendant.
22

23 30. Upon information and belief, Defendant engaged in the Infringement
24 knowingly and in violation of applicable United States Copyright Laws.

25 31. Upon information and belief, Defendant had complete control over
26 and actively reviewed and monitored the content posted on the Account.
27
28

1 32. Upon information and belief, Defendant has the legal right and
2 ability to control and limit the infringing activities on its Account and exercised
3 and/or had the right and ability to exercise such right.
4

5 33. Upon information and belief, Defendant monitors the content on its
6 Account.
7

8 34. Upon information and belief, Defendant has received a financial
9 benefit directly attributable to the Infringement.
10

11 35. Upon information and belief, the Infringement increased traffic to
12 the Account and, in turn, caused Defendant to realize an increase in its advertising
13 revenues and/or merchandise sales.
14

15 36. Upon information and belief, a large number of people have viewed
16 the unlawful copies of the Photograph on the Account.
17

18 37. Upon information and belief, Defendant at all times had the ability
19 to stop the reproduction and display of Plaintiff's copyrighted material.
20

21 38. Defendant's use of the Photograph, if widespread, would harm
22 Plaintiff's potential market for the Photograph.
23

24 39. As a result of Defendant's misconduct, Plaintiff has been
25 substantially harmed.
26
27
28

FIRST COUNT

(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)

40. Plaintiff repeats and incorporates by reference the allegations contained in the preceding paragraphs, as though set forth in full herein.

41. The Photograph is an original, creative work in which Plaintiff owns a valid copyright properly registered with the United States Copyright Office.

42. Plaintiff has not licensed Defendant the right to use the Photograph in any manner, nor has Plaintiff assigned any of its exclusive rights in the copyrights to Defendant.

43. Without permission or authorization from Plaintiff and in willful violation of Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and illegally copied, stored, reproduced, distributed, adapted, and/or publicly displayed works copyrighted by Plaintiff thereby violating one of Plaintiff's exclusive rights in its copyrights.

44. Defendant's reproduction of the Photograph and display of the Photograph constitutes willful copyright infringement. *Feist Publications, Inc. v. Rural Telephone Service Co., Inc.*, 499 U.S. 340, 361 (1991).

45. Plaintiff is informed and believes and thereon alleges that the Defendant willfully infringed upon Plaintiff's copyrighted Photograph in violation of Title 17 of the U.S. Code, in that they used, published, communicated, posted,

1 publicized, and otherwise held out to the public for commercial benefit, the
2 original and unique Photograph of the Plaintiff without Plaintiff's consent or
3 authority, by using them in the infringing post on the Account.
4

5 46. As a result of Defendant's violations of Title 17 of the U.S. Code,
6 Plaintiff is entitled to an award of actual damages and disgorgement of all of
7 Defendant's profits attributable to the infringements as provided by 17 U.S.C. §
8 504 in an amount to be proven or, in the alternative, at Plaintiff's election, an
9 award for statutory damages against each Defendant for each infringement
10 pursuant to 17 U.S.C. § 504(c).
11

12 47. As a result of the Defendant's violations of Title 17 of the U.S. Code,
13 the court in its discretion may allow the recovery of full costs as well as reasonable
14 attorney's fees and costs pursuant to 17 U.S.C. § 505 from Defendant.
15

16 48. As a result of Defendant's violations of Title 17 of the U.S. Code,
17 Plaintiff is entitled to injunctive relief to prevent or restrain infringement of his
18 copyright pursuant to 17 U.S.C. § 502.
19

20
21 **JURY DEMAND**

22 49. Plaintiff hereby demands a trial of this action by jury.
23

24 **PRAYER FOR RELIEF**

25 **WHEREFORE**, Plaintiff respectfully requests judgment as follows:
26

27 That the Court enters a judgment finding that Defendant has infringed on
28

1 Plaintiff's rights to the Photograph in violation of 17 U.S.C. §501 et seq. and
2 award damages and monetary relief as follows:

- 3
- 4 a. finding that Defendant infringed Plaintiff's copyright interest
- 5 in the Photograph by copying and displaying without a license
- 6 or consent;
- 7
- 8 b. for an award of actual damages and disgorgement of all of
- 9 Defendant's profits attributable to the infringements as
- 10 provided by 17 U.S.C. § 504 in an amount to be proven or, in
- 11 the alternative, at Plaintiff's election, an award for statutory
- 12 damages against each Defendant for each infringement
- 13 pursuant to 17 U.S.C. § 504(c), whichever is larger;
- 14
- 15 c. for an order pursuant to 17 U.S.C. § 502(a) enjoining
- 16 Defendant from any infringing use of any of Plaintiff's works;
- 17
- 18 d. for costs of litigation and reasonable attorney's fees against
- 19 Defendant pursuant to 17 U.S.C. § 505 and/or 17 U.S.C.
- 20 §1203(b)(4) and (5);
- 21
- 22 e. for pre judgment interest as permitted by law; and
- 23
- 24
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f. for any other relief the Court deems just and proper.

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